

[Fourth Reprint]

ASSEMBLY, No. 2617

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED JUNE 28, 2002

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman HERBERT CONAWAY, JR.

District 7 (Burlington and Camden)

Co-Sponsored by:

Assemblyman Hackett, Assemblywomen Perez-Cinciarelli, Quigley, Assemblymen Fraguera, Van Drew, Burzichelli, Fisher, Diegnan, Guear, Assemblywoman Greenstein, Assemblymen Barnes, Wisniewski, Thompson, Eagler, Assemblywomen Pou, Previte, Assemblymen Sarlo, R.Smith, Senators Sacco, Coniglio, Sweeney, Turner and Assemblyman Conners

SYNOPSIS

Expands list of crimes for which blood samples are collected for purposes of DNA testing.

CURRENT VERSION OF TEXT

As amended by the Assembly on June 12, 2003.

(Sponsorship Updated As Of: 6/13/2003)

1 AN ACT concerning DNA testing ³[and],³ amending ³and
2 supplementing³ P.L.1994, c.136 ³and amending R.S.39:5-41³.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 2 of P.L.1994, c.136 (C.53:1-20.18) is amended to read
8 as follows:

9 2. The Legislature finds and declares that DNA databanks are an
10 important tool in criminal investigations and in deterring and detecting
11 recidivist acts. [Several states have enacted laws requiring persons
12 convicted of certain crimes, especially serious sexual offenses, to
13 provide genetic samples for DNA profiling. Moreover, it] It is the
14 policy of this State to assist federal, state and local criminal justice and
15 law enforcement agencies in the identification and detection of
16 individuals who are the subjects of criminal investigations. It is
17 therefore in the best interest of the State of New Jersey to establish a
18 DNA database and a DNA databank containing blood or other
19 biological samples submitted by [certain serious sexual offenders]
20 every person convicted or found not guilty by reason of insanity of a
21 crime. It is also in the best interest of the State of New Jersey to
22 include in this DNA database and DNA databank blood or other
23 biological samples submitted by [certain] juveniles adjudicated
24 delinquent or adjudicated not delinquent by reason of insanity for
25 [certain] acts, which if committed by an adult, would constitute
26 [serious sexual offenses and blood samples submitted by certain
27 persons found not guilty by reason of insanity, or adjudicated not
28 delinquent by reason of insanity, of certain serious sexual offenses] a
29 crime.

30 (cf: P.L.1997, c.341, s.1)

31

32 2. Section 3 of P.L.1994, c.136 (C.53:1-20.19) is amended to read
33 as follows:

34 3. As used in this act:

35 "CODIS" means the FBI's national DNA identification index system
36 that allows the storage and exchange of DNA records submitted by
37 State and local forensic laboratories.

38 "DNA" means deoxyribonucleic acid.

39 "DNA Record" means DNA identification information stored in the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted December 9, 2002.

² Assembly AAP committee amendments adopted February 3, 2003.

³ Senate SBA committee amendments adopted May 15, 2003.

⁴ Assembly floor amendments adopted June 12, 2003.

1 State DNA database or CODIS for the purpose of generating
2 investigative leads or supporting statistical interpretation of DNA test
3 results.

4 "DNA Sample" means a blood or other biological sample provided
5 by any person convicted of any offense enumerated in section 4 of
6 [this act] P.L.1994, c.136 (C.53:1-20.20) or provided by any juvenile
7 adjudicated delinquent for an act which, if committed by an adult,
8 would constitute any offense enumerated in section 4 of [this act]
9 P.L.1994, c.136 (C.53:1-20.20) or submitted to the division for
10 analysis pursuant to a criminal investigation.

11 "Division" means the Division of State Police in the Department of
12 Law and Public Safety.

13 "FBI" means the Federal Bureau of Investigation.

14 "State DNA Database" means the DNA identification record system
15 to be administered by the division which provides DNA records to the
16 FBI for storage and maintenance in CODIS.

17 "State DNA Databank" means the repository of DNA samples
18 collected under the provisions of this act.

19 (cf: P.L.1997, c.341, s.2)

20

21 3. Section 4 of P.L.1994, c.136 (C.53:1-20.20) is amended to read
22 as follows:

23 4. a. On or after January 1, 1995 every person convicted of
24 aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or
25 aggravated criminal sexual contact and criminal sexual contact under
26 N.J.S.2C:14-3 or any attempt to commit any of these crimes and who
27 is sentenced to a term of imprisonment shall have a blood sample
28 drawn or other biological sample collected for purposes of DNA
29 testing upon commencement of the period of confinement.

30 In addition, every person convicted on or after January 1, 1995 of
31 these offenses, but who is not sentenced to a term of confinement,
32 shall provide a DNA sample as a condition of the sentence imposed.
33 A person who has been convicted and incarcerated as a result of a
34 conviction of one or more of these offenses prior to January 1, 1995
35 shall provide a DNA sample before parole or release from
36 incarceration.

37 b. On or after January 1, 1998 every juvenile adjudicated
38 delinquent for an act which, if committed by an adult, would constitute
39 aggravated sexual assault or sexual assault under N.J.S.2C:14-2 or
40 aggravated criminal sexual contact or criminal sexual contact under
41 N.J.S.2C:14-3, or any attempt to commit any of these crimes, shall
42 have a blood sample drawn or other biological sample collected for
43 purposes of DNA testing.

44 c. On or after January 1, 1998 every person found not guilty by
45 reason of insanity of aggravated sexual assault or sexual assault under
46 N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal sexual

1 contact under N.J.S.2C:14-3, or any attempt to commit any of these
2 crimes, or adjudicated not delinquent by reason of insanity for an act
3 which, if committed by an adult, would constitute one of these crimes,
4 shall have a blood sample drawn or other biological sample collected
5 for purposes of DNA testing.

6 d. On or after January 1, 2000 every person convicted of murder
7 pursuant to N.J.S.2C:11-3, manslaughter pursuant to N.J.S.2C:11-4,
8 aggravated assault of the second degree pursuant to paragraph (1) or
9 (6) of subsection b. of N.J.S.2C:12-1, kidnapping pursuant to
10 N.J.S.2C:13-1, luring or enticing a child in violation of P.L.1993,
11 c.291 (C.2C:13-6), engaging in sexual conduct which would impair or
12 debauch the morals of a child pursuant to N.J.S.2C:24-4, or any
13 attempt to commit any of these crimes and who is sentenced to a term
14 of imprisonment shall have a blood sample drawn or other biological
15 sample collected for purposes of DNA testing upon commencement of
16 the period of confinement.

17 In addition, every person convicted on or after January 1, 2000 of
18 these offenses, but who is not sentenced to a term of confinement,
19 shall provide a DNA sample as a condition of the sentence imposed.
20 A person who has been convicted and incarcerated as a result of a
21 conviction of one or more of these offenses prior to January 1, 2000
22 shall provide a DNA sample before parole or release from
23 incarceration.

24 e. On or after January 1, 2000 every juvenile adjudicated
25 delinquent for an act which, if committed by an adult, would constitute
26 murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to
27 N.J.S.2C:11-4, aggravated assault of the second degree pursuant to
28 paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping
29 pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of
30 P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which would
31 impair or debauch the morals of a child pursuant to N.J.S.2C:24-4, or
32 any attempt to commit any of these crimes, shall have a blood sample
33 drawn or other biological sample collected for purposes of DNA
34 testing.

35 f. On or after January 1, 2000 every person found not guilty by
36 reason of insanity of murder pursuant to N.J.S.2C:11-3, manslaughter
37 pursuant to N.J.S.2C:11-4, aggravated assault of the second degree
38 pursuant to paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1,
39 kidnapping pursuant to N.J.S.2C:13-1, luring or enticing a child in
40 violation of P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct
41 which would impair or debauch the morals of a child pursuant to
42 N.J.S.2C:24-4, or any attempt to commit any of these crimes, or
43 adjudicated not delinquent by reason of insanity for an act which, if
44 committed by an adult, would constitute one of these crimes, shall
45 have a blood sample drawn or other biological sample collected for
46 purposes of DNA testing.

1 g. Every person convicted or found not guilty by reason of insanity
2 of a crime shall have a blood sample drawn or other biological sample
3 collected for purposes of DNA testing. If the person is sentenced to
4 a term of imprisonment or confinement, the person shall have a blood
5 sample drawn or other biological sample collected for purposes of
6 DNA testing upon commencement of the period of imprisonment or
7 confinement. If the person is not sentenced to a term of imprisonment
8 or confinement, the person shall provide a DNA sample as a condition
9 of the sentence imposed. A person who has been convicted or found
10 not guilty by reason of insanity of a crime prior to the effective date of
11 P.L. , c. (now pending before the Legislature as this bill) and who,
12 on the effective date, is serving a sentence of imprisonment, probation,
13 parole or other form of supervision as a result of the crime or is
14 confined following acquittal by reason of insanity shall provide a DNA
15 sample before termination of imprisonment, probation, parole,
16 supervision or confinement, as the case may be.

17 h. Every juvenile adjudicated delinquent, or adjudicated not
18 delinquent by reason of insanity, for an act which, if committed by an
19 adult, would constitute a crime shall have a blood sample drawn or
20 other biological sample collected for purposes of DNA testing. If
21 under the order of disposition the juvenile is sentenced to some form
22 of imprisonment, detention or confinement, the juvenile shall have a
23 blood sample drawn or other biological sample collected for purposes
24 of DNA testing upon commencement of the period of imprisonment,
25 detention or confinement. If the order of disposition does not include
26 some form of imprisonment, detention or confinement, the juvenile
27 shall provide a DNA sample as a condition of the disposition ordered
28 by the court. A juvenile who, prior to the effective date of P.L. , c.
29 (now pending before the Legislature as this bill), has been adjudicated
30 delinquent, or adjudicated not delinquent by reason of insanity for an
31 act which, if committed by an adult, would constitute a crime and who
32 on the effective date is under some form of imprisonment, detention,
33 confinement, probation, parole or any other form of supervision as a
34 result of the offense or is confined following an adjudication of not
35 delinquent by reason of insanity shall provide a DNA sample before
36 termination of imprisonment, detention, supervision or confinement,
37 as the case may be.

38 i. Nothing in this act shall be deemed to limit or preclude collection
39 of DNA samples as authorized by court order or in accordance with
40 any other law.

41 (cf: P.L.2000, c.118, s.1)

42

43 4. Section 5 of P.L.1994, c.136 (C.53:1-20.21) is amended to read
44 as follows:

45 5. Tests shall be performed on each blood or other biological
46 sample submitted pursuant to section 4 of [this act] P.L.1994, c.136

1 (C.53:1-20.20) in order to analyze and type the genetic markers
2 contained in or derived from the DNA. Except insofar as the use of
3 the results of these tests for such purposes would jeopardize or result
4 in the loss of federal funding, the results of these tests shall be used for
5 the following purposes:

- 6 a. For law enforcement identification purposes;
- 7 b. For development of a population database;
- 8 c. To support identification research and protocol development of
9 forensic DNA analysis methods;
- 10 d. To assist in the recovery or identification of human remains from
11 mass disasters or for other humanitarian purposes;
- 12 e. For research, administrative and quality control purposes;
- 13 f. For judicial proceedings, by order of the court, if otherwise
14 admissible pursuant to applicable statutes or rules;
- 15 g. For criminal defense purposes, on behalf of a defendant, who
16 shall have access to relevant samples and analyses performed in
17 connection with the case in which the defendant is charged; and
- 18 h. For such other purposes as may be required under federal law
19 as a condition for obtaining federal funding.

20 The DNA record of identification characteristics resulting from the
21 DNA testing conducted pursuant to this section shall be stored and
22 maintained in the State DNA database and forwarded to the FBI for
23 inclusion in CODIS. The DNA sample itself will be stored and
24 maintained in the State DNA databank.

25 (cf: P.L.1994, c.136, s.5)

26
27 5. Section 6 of P.L.1994, c.136 (C.53:1-20.22) is amended to read
28 as follows:

29 6. Each **[DNA]** blood sample required to be drawn or biological
30 sample collected pursuant section 4 of **[this act]** P.L.1994, c.136
31 (C.53:1-20.20) from persons who are incarcerated shall be drawn or
32 collected at the place of incarceration. DNA samples from persons
33 who are not sentenced to a term of confinement shall be drawn or
34 collected at a prison or jail unit to be specified by the sentencing court.
35 DNA samples from persons who are adjudicated delinquent shall be
36 drawn or collected at a prison or jail identification and classification
37 bureau specified by the family court. Only a correctional health nurse
38 technician, physician, registered professional nurse, licensed practical
39 nurse, laboratory or medical technician, phlebotomist or other health
40 care worker with phlebotomy training shall draw any **[DNA]** blood
41 sample to be submitted for analysis, and only a correctional health
42 nurse technician, physician, registered professional nurse, licensed
43 practical nurse, laboratory or medical technician or person who has
44 received biological sample collection training in accordance with
45 protocols adopted by the Attorney General ², in consultation with the
46 Department of Corrections, ² shall collect ² or supervise the collection

1 of² any other biological sample to be submitted for analysis. No civil
2 liability shall attach to any person authorized to draw blood or collect
3 a biological sample by this section as a result of drawing blood or
4 collecting the sample from any person if the blood was drawn or
5 sample collected according to recognized medical procedures. No
6 person shall be relieved from liability for negligence in the drawing or
7 collecting of any DNA sample. No sample shall be drawn or collected
8 pursuant to section 4 of P.L.1994, c.136 (C.53:1-20.20) if the division
9 has previously received [an adequate] a blood or biological sample
10 from the convicted person or the juvenile adjudicated delinquent which
11 was adequate for successful analysis and identification.
12 (cf: P.L.1997, c.341, s.4)

13

14 6. R.S.39:5-41 is amended to read as follows:

15 39:5-41. a. All fines, penalties and forfeitures imposed and collected
16 under authority of law for any violations of R.S.39:4-63 and
17 R.S.39:4-64 shall be forwarded by the judge to whom the same have
18 been paid to the proper financial officer of a county, if the violation
19 occurred within the jurisdiction of that county's central municipal
20 court, established pursuant to N.J.S.2B:12-1 et seq. or the
21 municipality wherein the violation occurred, to be used by the county
22 or municipality to help finance litter control activities in addition to or
23 supplementing existing litter pickup and removal activities in the
24 municipality.

25 b. Except as otherwise provided by subsection a. of this section, all
26 fines, penalties and forfeitures imposed and collected under authority
27 of law for any violations of the provisions of this Title, other than
28 those violations in which the complaining witness is the director, a
29 member of his staff, a member of the State Police, a member of a
30 county police department and force or a county park police system in
31 a county that has established a central municipal court, an inspector of
32 the Board of Public Utilities, or a law enforcement officer of any other
33 State agency, shall be forwarded by the judge to whom the same have
34 been paid as follows: one-half of the total amount collected to the
35 financial officer, as designated by the local governing body, of the
36 respective municipalities wherein the violations occurred, to be used
37 by the municipality for general municipal use and to defray the cost of
38 operating the municipal court; and one-half of the total amount
39 collected to the proper financial officer of the county wherein they
40 were collected, to be used by the county as a fund for the
41 construction, reconstruction, maintenance and repair of roads and
42 bridges, snow removal, the acquisition and purchase of rights-of-way,
43 and the purchase, replacement and repair of equipment for use on said
44 roads and bridges therein. Up to 25% of the money received by a
45 municipality pursuant to this subsection, but not more than the actual
46 amount budgeted for the municipal court, whichever is less, may be

1 used to upgrade case processing.

2 All fines, penalties and forfeitures imposed and collected under
3 authority of law for any violations of the provisions of this Title, in
4 which the complaining witness is a member of a county police
5 department and force or a county park police system in a county that
6 has established a central municipal court, shall be forwarded by the
7 judge to whom the same have been paid to the financial officer,
8 designated by the governing body of the county, for all violations
9 occurring within the jurisdiction of that court, to be used for general
10 county use and to defray the cost of operating the central municipal
11 court.

12 Whenever any county has deposited moneys collected pursuant to
13 this section in a special trust fund in lieu of expending the same for the
14 purposes authorized by this section, it may withdraw from said special
15 trust fund in any year an amount which is not in excess of the amount
16 expended by the county over the immediately preceding three-year
17 period from general county revenues for said purposes. Such moneys
18 withdrawn from the trust fund shall be accounted for and used as are
19 other general county revenues.

20 c. (Deleted by amendment, P.L.1993, c.293.)

21 d. Notwithstanding the provisions of subsections a. and b. of this
22 section, \$1.00 shall be added to the amount of each fine and penalty
23 imposed and collected under authority of any law for any violation of
24 the provisions of Title 39 of the Revised Statutes or any other motor
25 vehicle or traffic violation in this State and shall be forwarded by the
26 person to whom the same are paid to the State Treasurer. In addition,
27 upon the forfeiture of bail, \$1.00 of that forfeiture shall be forwarded
28 to the State Treasurer. The State Treasurer shall annually deposit
29 those moneys so forwarded in the "Body Armor Replacement" fund
30 established pursuant to section 1 of P.L.1997, c.177 (C.52:17B-4.4).
31 Beginning in the fiscal year next following the effective date of this
32 act, the State Treasurer annually shall allocate from those moneys so
33 forwarded an amount not to exceed \$400,000 to the Department of
34 Personnel to be expended exclusively for the purposes of funding the
35 operation of the "Law Enforcement Officer Crisis Intervention
36 Services" telephone hotline established and maintained under the
37 provisions of P.L.1998, c.149 (C.11A:2-25 et al.).

38 e. Notwithstanding the provisions of subsections a. and b. of this
39 section, \$1 shall be added to the amount of each fine and penalty
40 imposed and collected under authority of any law for any violation of
41 the provisions of Title 39 of the Revised Statutes or any other motor
42 vehicle or traffic violation in this State and shall be forwarded by the
43 person to whom the same are paid to the State Treasurer. The State
44 Treasurer shall annually deposit those moneys so forwarded in the
45 "New Jersey Spinal Cord Research Fund" established pursuant to
46 section 9 of P.L.1999, c.201 (C.52:9E-9). In order to comply with the

1 provisions of Article VIII, Section II, paragraph 5 of the State
2 Constitution, a municipal or county agency which forwards moneys to
3 the State Treasurer pursuant to this subsection may retain an amount
4 equal to 2% of the moneys which it collects pursuant to this subsection
5 as compensation for its administrative costs associated with
6 implementing the provisions of this subsection.

7 ¹f. Notwithstanding the provisions of subsection a. and b. of this
8 section, \$2.00 shall be added to the amount of each fine and penalty
9 imposed and collected by a court under authority of any law for any
10 violation of the provisions of Title 39 of the Revised Statutes or any
11 other motor vehicle or traffic violation in this State and shall be
12 forwarded by the person to whom the same are paid to the State
13 Treasurer. The State Treasurer shall annually deposit those monies so
14 forwarded in the "New Jersey Forensic DNA Laboratory Fund"
15 established pursuant to P.L. , c. (now pending before the
16 Legislature as this bill). Prior to depositing the monies into the fund,
17 the State Treasurer shall forward to the Administrative Office of the
18 Courts an amount not to exceed \$475,000 from monies initially
19 collected pursuant to this subsection to be used exclusively to establish
20 a collection mechanism and to provide funding to update the
21 Automated Traffic System Fund created pursuant to N.J.S.2B:12-30
22 to implement the provisions of this subsection.¹

23 ³ The authority to impose additional fines and penalties under this
24 subsection shall ⁴take effect 90 days after the effective date of P.L. ,
25 c. (now pending before the Legislature as this bill) and shall⁴
26 expire five years ⁴[following the effective date of P.L. , c. (now
27 pending before the Legislature as this bill)] thereafter⁴ . Not later
28 than the 180th day prior to such expiration, the Attorney General shall
29 prepare and submit to the Governor and the Legislature a report on
30 the collection and use of DNA samples under P.L.1994, c.136. The
31 report shall cover the period beginning on that effective date and
32 ending four years thereafter. The report shall indicate separately, for
33 each one-year period during those four years that begins on that
34 effective date or an anniversary thereof, the number of each type of
35 biological sample taken and the total cost of taking that type of
36 sample, and also the number of identifications and exonerations
37 achieved through the use of the samples. In addition, the report shall
38 evaluate the effectiveness, including cost effectiveness, of having the
39 samples available to further police investigations and other forensic
40 purposes.³

41 (cf: P.L.1999, c.201, s.10)

42
43 ¹7. (New section) a. There is created in the Division of State
44 Police in the Department of Law and Public Safety a separate special
45 account to be known as the "New Jersey Forensic DNA Laboratory
46 Fund." All moneys paid to the Division of State Police pursuant to

1 subsection f. of R.S.39:5-41 shall be deposited in the fund.

2 b. Moneys in the "New Jersey Forensic DNA Laboratory Fund"
3 shall be used for the expenses of DNA laboratories, criminalistics and
4 other forensic applications.¹

5

6 ¹[6.] 8.¹ This act shall take effect immediately.